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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/935,629	09/23/1997	E. ALAN BATES		8872

7590 04/02/2002

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EXAMINER

ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 04/02/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application N .

08/935,629

Applicant(s)

BATES ET AL.

Examiner

Lyle A Alexander

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2/1/02, interview summary.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,8 and 23-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,8 and 23-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 03 January 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 29.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

This office action is in response to the 2/1/02 telephone interview. Applicant's pointed out pending claims 35 and 36 were not addressed in either of the office actions of papers 23 or 27. Additionally, in both papers 23 and 27 the cover sheet "Office action summary" failed to indicate the status of claims 25-36. The Office regrets any inconvenience the typographical errors in the Office action summary cover sheets may have caused Applicants. The Office will send out a new Office action because claims 35-36 were not addressed in papers 23 and 27.

Applicants also requested consideration of the proposed drawing correction received 1/3/02 and the status of the disclosure document. These concerns will also be visited in this office action.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,8,23-34 and 37-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dafforn et al. in view of Senior.

See the appropriate paragraph of paper 23.

New claim 45 requires "cap/cover means having a wall which, in sealing, faces said face and contacts the top of the well/opening". Applicants stated the cover taught by Senior fails to meet this limitation because the cover fails to contact the top of the well opening.

It is noted Dafforn et al. is the primary reference that is modified to have a cover. Dafforn et al. teaches sample tops of the well openings(20,22) are on the top surface.

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When modified in view of Senior, the limitation of well face in contact with the cover would be met.

Claims 1,8 and 23-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/33519 or Chipkowski alone or in view of Senior.

WO 97/33519 and Chipkowski teach assay devices that contain test strips. There are openings to receive sample and the sample to multiple test strips each for a different analyte that may be in the sample. At the opposite end of the device is an aperture allowing viewing of results from each test strip. The device is inserted into a cap having a slot and connected to a container. The container is read on the claimed "cap/cover means having a wall which, in sealing, faces said face and contacts the top of the well/opening".

WO teaches cap(22), slot(19) and container(11). Chipkowski teaches cap(38), slot(39) and container(11).

WO 97/33519 and Chipkowski are silent to the claimed snap fit relationships and photocopying the results. The Office maintains snap fit relationships are notoriously well known in the art for the advantages of providing an inexpensive and easily manipulated secure means of attachment. Additionally, photocopying for archival results or as an easy and inexpensive means of duplicating results and information sharing is also notoriously well known in the art.

It would have been within the skill of the art to modify WO 97/33519 or Chipkowski and use a snap fit means to secure the top and photocopying of the results to gain the above advantages.

Even if the container taught by WO 97/33519 and Chipkowski were not considered as a cap/cover, Senior teaches in column 2 lines 30+ that after collection of a sample a cover should seal the collection area to prevent contamination. In figure 3 the cover is depicted as covering and isolating the sample application portion.

It would have been within the skill of the art to modify WO 97/33519 or Chipkowski in view of Senior and use a cover to gain the above advantages.

### ***Response to Arguments***

In the 2/1/02 interview, Applicants stated the cover taught by Senior does not read on the claimed "cap/cover means having a wall which, in sealing, faces said face and contacts the top of the well/opening".

Applicants were arguing as if Senior was primary reference and correctly pointed out that Senior fails to teach the claimed cap/cover relationship of claim 45. However, Dafforn et al. is the primary reference and teaches the sample application wells on the top surface of the device. When the cover taught by Senior is incorporated into Dafforn et al., the claimed requirements of the cover face contacting the top of the well/openings are met.


The MPEP section 1706 discusses the handling of disclosure documents. For the disclosure document to be retained longer than 2 years it must be referenced in a separate letter in a related patent application filed within those two years. If Applicants have met the conditions required by MPEP 1706, a copy of the separate letter with a mail receipt is requested. A copy of the first page of the 5/9/97 disclosure document is in the file.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 703-308-3893. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7718 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Lyle A Alexander  
Primary Examiner  
Art Unit 1743

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February 4, 2002